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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 734 (VSB)

5 JAIME SANTANA,

6 Defendant.

Sentence

7 -----x  
8 New York, N.Y.  
9 August 13, 2021  
10:00 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13  
14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the  
17 Southern District of New York

BY: JUSTIN RODRIGUEZ

17 Assistant United States Attorney

18 ALLAN P. HABER

19 Attorney for Defendant  
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L8DsSAN1

(Case called)

THE COURT: If I could ask counsel to please identify themselves for the record.

MR. RODRIGUEZ: Good morning, your Honor. Justin Rodriguez for the United States.

THE COURT: Good morning.

MR. HABER: Good morning, your Honor. Allan Haber for Jaime Santana.

THE COURT: Good morning, Mr. Haber.

Good morning, Mr. Santana.

So this matter is on for sentencing in United States v. Jaime Santana.

Now, Mr. Santana, if at any point in time during the proceedings you don't understand something that I say or if you would like to speak with Mr. Haber, just let me know, and I'll stop the proceedings and either I or Mr. Haber will try to answer your questions, or I'll let you speak to Mr. Haber in private. OK?

THE DEFENDANT: All right. Thank you, sir.

THE COURT: Mr. Haber, remain seated. Mr. Rodriguez also. Move the microphone closer to you.

MR. RODRIGUEZ: I just wanted to inquire, I know the court posted on the docket there would be a call-in number for members of the public. I just wanted to confirm that that was active.

L8DsSAN1

1 THE COURT: I'll have to check to see if my law clerk  
2 dialed in.

3 MR. RODRIGUEZ: OK.

4 THE COURT: If you want, we'll wait a second. She'll  
5 be right back up.

6 MR. RODRIGUEZ: I appreciate that, your Honor. I know  
7 that from the government's side, there were a few people  
8 interested in dialing in.

9 THE COURT: Sure thing.

10 (Pause)

11 If we could go on the record.

12 I would just ask counsel to introduce themselves  
13 again, now that the members of the public are on.

14 MR. RODRIGUEZ: Good morning, your Honor. Justin  
15 Rodriguez for the United States.

16 THE COURT: Good morning.

17 MR. HABER: Good morning, your Honor. Allan Haber for  
18 Jaime Santana.

19 THE COURT: OK. Good morning.

20 Good morning, Mr. Santana, as I mentioned before.

21 THE DEFENDANT: Good morning.

22 THE COURT: As I mentioned before, no need to stand up  
23 at this juncture. The only thing I ask is if you could pull  
24 the microphone a little bit closer to you.

25 That's great. Thank you.

L8DsSAN1

1           Now, as I mentioned before, if at any point in time  
2           you have a question or if you would like to speak to Mr. Haber,  
3           just let me know, and either I or Mr. Haber will try and answer  
4           your question or I'll allow you to speak to Mr. Haber in  
5           private. OK?

6           THE DEFENDANT: All right, thank you, sir.

7           THE COURT: Now, as an initial matter, I would like  
8           to review the materials that I have received and read in  
9           connection with today's sentencing. I've received the  
10          presentence report, which was initially prepared on October 28  
11          of 2020 and revised on November 24 of 2020. I've also received  
12          defendant's August 4 sentencing letter, sentencing letter with  
13          various attachments. Those attachments include a mitigation  
14          report and letters from Mr. Santana's oldest daughter, his  
15          youngest daughter, his ex-wife, and his sister. I've also  
16          received the government's sentencing submission file on the  
17          August 8 of 2021. I'm sorry. If I didn't mention this,  
18          defendant's was filed August 4, 2021. I want to make sure I  
19          said 2021.

20          OK. Let me ask, have the parties received each of these  
21          submissions, Mr. Rodriguez?

22          MR. RODRIGUEZ: Yes, your Honor.

23          THE COURT: Mr. Haber?

24          MR. HABER: Yes, your Honor.

25          THE COURT: All right. Have all the submissions been

L8DsSAN1

1 filed on the docket?

2 MR. RODRIGUEZ: Yes, your Honor.

3 MR. HABER: Yes, your Honor.

4 THE COURT: OK. Fantastic.

5 Now, are there any other submissions that I haven't  
6 mentioned that I should have in connection with today's  
7 sentencing?

8 MR. HABER: No, your Honor.

9 MR. RODRIGUEZ: No, your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Haber, have you received the resentence report and  
12 discussed it with Mr. Santana?

13 MR. HABER: I have, your Honor, and my client, by the  
14 way, is Spanish, but he speaks fluent English. We don't have  
15 the aid of an interpreter.

16 Also, the court should be aware that his mother is in  
17 court. He had several other family members that wanted to  
18 come, but apparently his sister's son was killed in an auto  
19 accident, and she is grieving now and couldn't make it up here  
20 from Tennessee.

21 THE COURT: OK.

22 MR. HABER: My apologies for that, your Honor.

23 THE COURT: No. No, that's fine. I know there were  
24 several members who were going to attend.

25 My condolences. I'm sorry to hear that.

L8DsSAN1

1 THE DEFENDANT: Thank you.

2 THE COURT: Let me ask, Mr. Santana, have you read the  
3 presentence report?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you discussed it with Mr. Haber?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had an opportunity to discuss  
8 with Mr. Haber any errors or anything else that you think  
9 should be in the report?

10 Have you been able to discuss that with him?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Mr. Haber, do you have any  
13 objections to the report?

14 MR. HABER: The only objection I have is for the  
15 recommended sentence, which I think is a little off the wall,  
16 little off the roof, and I made that clear, I think, in my  
17 letter.

18 THE COURT: You did.

19 MR. HABER: But I think from a legal perspective, the  
20 letter is accurate.

21 THE COURT: OK. All right. Thank you.

22 Let me ask, AUSA Rodriguez, do you have any objections  
23 to the report?

24 MR. RODRIGUEZ: No, your Honor.

25 THE COURT: All right. I'm going to adopt the factual

L8DsSAN1

1 findings in the presentence report, and the presentence report  
2 will be made part of the record in this case. It will be  
3 placed under seal. If there is an appeal taken, counsel on the  
4 appeal can have access to the report without further  
5 application to myself or one of my colleagues.

6 Now, Mr. Santana, in considering what the appropriate  
7 sentence is for you, I must consider the sentencing guidelines.  
8 Now, the guidelines are a set of rules that were designed to  
9 assist judges like myself when we impose sentence on  
10 individuals convicted of crimes.

11 Now, although these guidelines have been mandatory at  
12 a certain point in time, and that would have meant that I would  
13 have been required to follow them in almost every instance,  
14 they are no longer binding. However, I am still required to  
15 consider the applicable guideline range as one factor among  
16 others when determining an appropriate sentence. In a sense,  
17 the guidelines are a starting point. So my first task is to  
18 determine what the sentencing range is under the guidelines.

19 Now, I'm going to use the November 1, 2018 guidelines  
20 in this case to determine the applicable guideline range.  
21 First, Count One involves a violation of Title 18, United  
22 States Code, Section 1962, the RICO statute, which is covered  
23 by Section 2E1.1 of the guidelines. Now, pursuant to that  
24 section, the base offense level is the greater of 19 or the  
25 offense level applicable to the underlying racketeering

L8DsSAN1

1 activity. Because there are more than one underlying offenses  
2 here, one is a narcotics conspiracy, which is racketeering act  
3 one, and the other is conspiracy to commit extortion, which is  
4 racketeering act two, each underlying offense be treated as if  
5 it contained a separate count of conviction for the purposes of  
6 the guidelines. Because there are multiple underlying offenses  
7 and multiple-count analysis must be performed.

8 Here, that means Count One, and racketeering act one,  
9 and Count Two, the narcotics conspiracy, are grouped together  
10 and form group one. Because the offense level is determined  
11 largely based on the quantity of the substance involved, now,  
12 racketeering act two forms its own group, and that is group  
13 two.

14 Now, with regard to group one, the guideline for  
15 violation of the RICO statute is 2B1.1. Now, pursuant to that  
16 section, the base offense level, as I mentioned, is the greater  
17 of 19 or the offense level applicable to the underlying  
18 racketeering activity. Now, here, that activity is drug  
19 distribution. And the section that is applicable of the  
20 guidelines to that is 2D1.1. So pursuant to that section of  
21 the guideline, because the offense involved at least 500 grams  
22 but less than 1.5 kilograms of methamphetamine, the base  
23 offense level is 30. Two levels are then added to that because  
24 Mr. Santana possessed a firearm during the incident offense.  
25 Therefore, the base offense level is 32. So that's group one.



L8DsSAN1

1           Now, group two, as with group one, the guideline for  
2 violation of the RICO statute, the base offense level is the  
3 greater of the base offense level 19 or the applicable  
4 underlying racketeering activity. Now, the underlying activity  
5 involved extortion, and the base offense level is 18. Two  
6 levels are added because the offense involved an expressed or  
7 implied threat of death, bodily injury, or kidnapping, in that  
8 Santana conspired to extort another gang member who needed to  
9 repay money or would result in a green light, because that gang  
10 member had introduced a bad connection. In other words, a bad  
11 drug supplier, and that drug supplier provided poor quality  
12 methamphetamine. So, therefore, the base offense level becomes  
13 20.

14           Now, the multiple-count adjustment must be performed  
15 and that required one unit be assigned to the group with the  
16 highest offense level. One additional unit is assigned for  
17 each group that is equally serious or from one to four levels  
18 less serious. One half of a unit would be assigned to any  
19 group that is five to eight levels less serious than the  
20 highest level.

21           Now, any groups that are nine or more levels less  
22 serious are disregarded. So here, applying those criteria, the  
23 results are one unit for group one, no units for group two,  
24 therefore, there is no adjustment that is made to the offense  
25 level and the offense level remains 32.

L8DsSAN1

1           Now, because Mr. Santana was an organizer or leader  
2 within the enterprise, here, the MS-13 gang, and of the  
3 criminal activity that involved -- the criminal activity  
4 involved five or more participants or was otherwise extensive,  
5 an additional four levels are added. So the combined adjusted  
6 offense level is 36. Now, three levels are subtracted from  
7 that for Mr. Santana's acceptance of responsibility for a level  
8 of 33.

9           Mr. Santana has ten criminal history points resulting  
10 in a criminal history category of V. Now, at a total offense  
11 level of 33, criminal history category V, the guideline range  
12 that is applicable here is 210 months to 262 months'  
13 imprisonment. Now, I do recognize that the plea agreement  
14 contained a different range because the parties had only been  
15 aware of one criminal history point resulting in a criminal  
16 history category of I. Now, the guideline fine range is 35,000  
17 to \$5 million, and the guideline supervised release range is  
18 one to three years on Count One and four to five years on Count  
19 Two.

20           Let me ask, do the parties agree based upon my  
21 calculations that Mr. Santana's guideline range is 210 months  
22 to 262 months?

23           MR. RODRIGUEZ: Yes, your Honor.

24           MR. HABER: Yes, your Honor.

25           THE COURT: OK. I believe, am I correct that the plea

L8DsSAN1

1 agreement had a guideline range of, is it, 100 -- I'm sorry --

2 MR. RODRIGUEZ: Your Honor, if I may?

3 THE COURT: Yes.

4 MR. RODRIGUEZ: It was 135 to 168 months of  
5 imprisonment.

6 THE COURT: OK. All right. Now, the probation  
7 department has recommended a sentence of 168 months.

8 Mr. Haber, in your sentencing submission on behalf of  
9 Mr. Santana, you requested a variance, and your request is for  
10 a sentence of 60 months. The government has requested a  
11 sentence within the guideline range.

12 Now, with regard to the applicability of any  
13 departures, I do recognize I have the authority to depart.  
14 However, I do not find that there is a basis for a departure.  
15 However, I do recognize that I do have the ability to grant a  
16 variance.

17 Let me ask, AUSA Rodriguez, do you wish to be heard  
18 with regard to sentencing?

19 MR. RODRIGUEZ: Yes. Thank you, your Honor.

20 THE COURT: Sure. Go ahead.

21 MR. RODRIGUEZ: Your Honor, this is our first  
22 appearance before the court. This case was originally assigned  
23 to Judge Pauley, but with his very tragic passing, it was  
24 reassigned to your Honor.

25 If you'll permit me some brief background on the case.

L8DsSAN1

1 THE COURT: Sure.

2 MR. RODRIGUEZ: At the center of this case is MS-13,  
3 which is one of the most notorious criminal enterprises in the  
4 world. The defendant, Mr. Santana, is a very high-ranking  
5 member of that enterprise. Now, there are two aspects of MS-13  
6 that I think are particularly relevant for today's purposes.  
7 One is the gang's history for committing acts of violence.  
8 That is certainly something that the defendant was aware of and  
9 embraced. In fact, there is a particular provision of the plea  
10 agreement -- and this is on page three -- where Mr. Santana  
11 admits that he participated in MS-13 knowing that members and  
12 associates of the gang committed, conspired, attempted, and  
13 threatened to commit acts of violence against rival gang  
14 members and others in furtherance of the enterprise.

15 The second aspect of the enterprise that I think is  
16 relevant for the court's consideration is the loyalty and  
17 longevity of some of its most senior members. That is  
18 illustrated by Mr. Santana. Mr. Santana joined the gang, as  
19 reflected in the PSR, at the age of 13. Now, it is worth  
20 pausing for a second, because Mr. Santana is not being  
21 sentenced here today for crimes he committed at the age of 13  
22 or in his teenage years or even in his 20s. Oftentimes, the  
23 argument is made to the court that people who commit crimes at  
24 that age do so as a result of youthful indiscretion and that  
25 they are likely to age out of committing crimes in the future.

L8DsSAN1

1           That didn't happen here. Mr. Santana committed the  
2 crimes that he is being sentenced for here today in his late  
3 30s. He did not age out of crime. He had literally decades,  
4 after he joined the gang, to mature, to reflect on his choices,  
5 and he did not choose a different way. In a way, that is not  
6 really surprising because of the success and the high position  
7 he achieved in the gang.

8           The basic structure of MS-13, its fundamental unit is  
9 the clique. Cliques can be roughly analogized to local  
10 chapters, but they are sometimes member of the same clique who  
11 can be operating in different states. Multiple cliques within  
12 MS-13 are then aligned into larger units called programs. The  
13 particular program at issue in this case is a program called  
14 the LA program of MS-13. The larger program, which is not only  
15 nationwide, but really spans both Central America and North  
16 America, is governed by something called a table, which is sort  
17 of akin to a leadership council. Five of the six members --  
18 excuse me -- five of the six defendants on this indictment are  
19 members of that table, that governing council of the LA program  
20 and they span, like as I suggested, the entire United States.

21           Mr. Romero at the time was based in California. In  
22 fact, he was in California State Prison participating in the  
23 affairs of the gang through a contraband prison cell phone.  
24 Mr. Santana was based in Tennessee. Mr. Garcia was based here  
25 in New York. Mr. Guerrero-Melgares was based in Virginia. I'm

L8DsSAN1

1       sorry. That is four of the members of the defendants on the  
2       indictment.

3               This leadership council did the sort of things that  
4       managers do. They coordinated efforts across states, and they  
5       solved problems and issues that came up in the gang. One of  
6       them is the extortion conspiracy that's at issue here, which  
7       I'll get to in a second.

8               But Mr. Santana, at least for the purpose of time that  
9       is covered by the indictment, which is to say 2019, was so  
10      senior that he was considered -- and the government would be  
11      able to prove this through cooperator testimony -- that he was  
12      widely considered to be the highest ranking non-incarcerated  
13      member of the LA program of MS-13, with Mr. Romero being the  
14      highest rank, though at the time he was incarcerated.

15              So what are the particular criminal acts that bring us  
16      here today? This is really three crimes wrapped into one, and  
17      with that MS-13 wrapping, they are all made worse. Here is  
18      what I mean by that. First, Mr. Santana was involved in  
19      selling illicitly firearms and ammunition, as well as  
20      narcotics.

21              But to focus on the firearms and ammunition for a  
22      second. He sold a 9mm handgun, .40 caliber handgun, and a  
23      .45 caliber hand gun, as well as boxes of ammunition to people  
24      who were thankfully working at the direction of law enforcement  
25      and able to remove these firearms from the stream of criminal

1 commerce. Here is why that is important, your Honor. We have,  
2 as the court undoubtedly knows, a gun violence problem in this  
3 country and in this city. Oftentimes, I'm here or one of my  
4 colleagues is here after somebody has been shot, after somebody  
5 has been killed.

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2 MR. RODRIGUEZ: But it's this kind of activity that is  
3 really the root cause. The flow of illegal firearms from other  
4 areas of the country, like in Tennessee, where Mr. Santana sold  
5 the guns, has an impact and a result here in New York City and  
6 in this district, where it results in people being harmed and  
7 killed. And so Mr. Santana, through his activity, is really  
8 exemplary of the kind of poor conduct that results in that. So  
9 that's one component of this.

10 The second crime that's wrapped into this is  
11 Mr. Santana's involvement in helping to set up what I would  
12 describe as a pipeline or distribution network of  
13 methamphetamine throughout the country. Now, the main  
14 architect of this is the top person on the indictment,  
15 Mr. Romero, but to make this work, he needed people and he  
16 needed leaders on the outside to execute this plan, and  
17 Mr. Santana was one of those people. He was intercepted on  
18 phone calls, which are described in the PSR, in which he,  
19 Mr. Romero and others were planning the distribution network of  
20 methamphetamine from Mexico to various places throughout the  
21 United States, including North Carolina, New York, Virginia,  
22 and Tennessee.

23 Now, methamphetamine is, of course, itself a very  
24 dangerous drug, one that leads to crippling addictions, even  
25 death, but I think it is made all the worse in the context of



1 this gang, because it is the lifeblood of the gang. It is what  
2 provides currency and bankrolls the gang's activities. So when  
3 members of MS-13 commit acts of violence, when junior members  
4 of the gang are directed to commit an act of violence, we know  
5 that it's not a BYOG, bring your own gun. They're supplied by  
6 members, senior members, of the organization who are  
7 responsible for maintaining a collection of firearms to use for  
8 common gang purposes.

9 Where do they get the money to buy these firearms?

10 Narcotics trafficking is one of their most lucrative  
11 sources. So this is narcotics trafficking with multiple harms,  
12 the harms that we see in regular narcotics trafficking, because  
13 of the dangerousness of the drug and its effects on people  
14 lives, but it's also the harm of what happens to the proceeds  
15 when put in the hands of the people in this organization.

16 The third crime that's wrapped up into this is  
17 extortion, and this is explained in the PSR.

18 Mr. Santana being a high-ranking member of the  
19 organization, when there was a problem and a serious problem  
20 that arose, he and other leaders were congregated on a phone  
21 call in which the riot act essentially had to be read to  
22 someone who had created a very serious problem, but it was even  
23 worse than that. This person had introduced a bad connection  
24 who had supplied bad drugs to the gang, and there were to be  
25 serious consequences. It was put in no uncertain terms: Repay

1 this money, or you will be green-lit, meaning harmed or,  
2 really, killed. And this is a very troubling act and I think  
3 should factor very seriously into the Court's consideration of  
4 the appropriate sentence, and it is really indicative of, I  
5 think, the -- I don't know if this is quite the right word, but  
6 the "privilege" of leadership that Mr. Santana had. He had  
7 achieved a certain status where he didn't have to be the one on  
8 the street committing acts of violence. It was sufficient and  
9 effective for him to be on the phone with other members,  
10 high-ranking members, to handle this problem.

11 And so, your Honor, those are the three crimes sort of  
12 wrapped into this and made all the worse by Mr. Santana's  
13 membership in the gang.

14 Now, there's one point that Mr. Haber brings up that  
15 I'd like to address, which is Mr. Santana's criminal history.

16 Now, it is certainly true that, I believe, this is his  
17 first felony conviction. I don't think that the Court should  
18 be overly comforted by the fact that his other convictions were  
19 misdemeanors. Some of them are in themselves still pretty  
20 troubling. For example, there's one, which I pointed out in my  
21 submission, in which he threatened to cut up his girlfriend  
22 into pieces and kill her, and in connection with that, when  
23 police stopped his car, they found a machete in his trunk. I  
24 don't think that that is a crime that is made somehow less  
25 troubling because it involved someone close to Mr. Santana

1     rather than a stranger or a fellow gang member.

2             The other, I think, suggestion from Mr. Haber's  
3     submission is, you know, Well, if Mr. Santana was this big bad  
4     gang member, wouldn't he have had more of a criminal record to  
5     reflect that? And that sort of goes back to a point I made  
6     earlier.

7             One of the privileges of leadership is you do not need  
8     to necessarily always be the one to get your hands dirty. And  
9     in fact, it's not surprising that the people who rise to the  
10    highest levels of the gang have been those who are successful  
11    in avoiding lengthy prison terms or other, deportation, that  
12    take them sort of off the field, so to speak. And so I don't  
13    think that the Court should walk away from reading  
14    Mr. Santana's criminal history as to suggest that that doesn't  
15    really reflect or is inconsistent with his history and  
16    leadership position in the gang.

17            So your Honor, for all of these reasons, the  
18    government submits that an appropriate sentence in this case  
19    would be one within the stipulated guidelines range in the  
20    parties' plea agreement.

21            THE COURT: OK. I do have some questions. Let me  
22    ask, in terms of Mr. Santana's leadership position, I recognize  
23    stemming from the wiretap are the various calls and the like.  
24    Is there anything else in the record that you would point to?  
25    And again, that speaks to Mr. Santana's leadership in the gang?

1 And I should say in the program.

2 MR. RODRIGUEZ: The program, yes.

3 THE COURT: OK. All right.

4 MR. RODRIGUEZ: I think your Honor has touched on all  
5 of the important facts.

6 I would add I think there is an admission from  
7 Mr. Santana, as reflected in the PSR, that yes, he also did  
8 recruit people into the gang. But in terms of his leadership  
9 position in the program, I think your Honor has picked up on  
10 it. Right? That translated into being someone who the  
11 high-ranking person in California can count on in Tennessee and  
12 who could speak to other high-ranking people in New York, in  
13 Virginia. So that is really No. 1. Right?

14 That leadership position is reflected in his ability  
15 to participate meaningfully and importantly in this  
16 transcontinental enterprise, not just someone who is focused on  
17 local activities with what's going on in Tennessee and that's  
18 it. That's not what he did. He's speaking with people, as I  
19 said, in California, New York, Virginia. That's No. 1.

20 And then the second -- I think I've already touched on  
21 it and your Honor appreciates it -- is sort of the  
22 problem-solving aspect. Right? That's not something when  
23 something goes wrong you call a member of the rank and file.  
24 The top people get on that phone call that sort of forms the  
25 basis of the extortion. Mr. Romero, Mr. Santana, other

1 high-ranking members of the conspiracy get on the phone, not  
2 just local to where the problem is, to sort of show how serious  
3 it is and how dire the consequences are. So those are the  
4 elements that I would point the Court to when considering his  
5 leadership position.

6 THE COURT: Let me ask, you did mention that had there  
7 been a trial, there would have been cooperators. The  
8 conspiracy that's charged and the RICO is from January 2019 to  
9 October of 2019. And to the extent you can tell me, why is it  
10 limited to that time period? I understand that that certain  
11 event is because of the wiretap, but is there a reason that you  
12 can tell me, or not?

13 MR. RODRIGUEZ: So, your Honor, certainly at the time  
14 of charging, we wanted to take a more conservative approach,  
15 because that time period is tied to not only the wiretaps but  
16 the interceptions of narcotics in -- that happened here,  
17 intercepted packages through the mail. So just as, I guess, a  
18 matter of prudence or, as I said, being conservative, we wanted  
19 to anchor the beginning of the conspiracy and the end of the  
20 conspiracy to something concrete. So I believe January 2019  
21 was around the time where we could say OK, here's either when  
22 the first package was intercepted or we had some sort of  
23 tangible proof for of preparations for that happening at this  
24 time.

25 THE COURT: OK.

1 Am I correct, and you mentioned, obviously, the  
2 history of MS-13 and the fact that, like a lot of gangs, there  
3 are acts of violence that do occur as part of the gang  
4 activity. Mr. Santana, though, certainly none of the -- well,  
5 the extortion charge, which I'll put to the side for the  
6 moment, certainly is a threat of violence. But is there  
7 anything in the record that you can point to, even if it's  
8 something that isn't directly in front of me, that would  
9 demonstrate that Mr. Santana, other than the extortion, was  
10 involved in any acts of violence?

11 MR. RODRIGUEZ: No, your Honor. I would say the  
12 Court's right. Other than the extortion, obviously he's  
13 involved in firearms trafficking, which is tools of violence,  
14 but the government -- I can't proffer that we had proof of  
15 Mr. Santana's involvement in other acts of violence beyond what  
16 the Court has just mentioned and what I just mentioned.

17 THE COURT: The connect was, in fact, a personal  
18 connection or several of the issues, and I think that  
19 conversation occurred in September of 2019. Did Massacre turn  
20 over the connect?

21 MR. RODRIGUEZ: So, your Honor, I'm not aware of any,  
22 the way I would put it, actual violence being done onto this  
23 person. I don't know if it was resolved because the debt was  
24 repaid or because this person disappeared and sort of took  
25 himself off the field of play, for example. And so for these

1 purposes, I certainly don't want to leave the Court with the  
2 impression violence actually occurred to this person. Rather,  
3 it was the threat, as communicated during this call.

4 THE COURT: So it can't be, because there are times  
5 when there may be a wiretap, the law enforcement authorities  
6 get an idea that there may be an act of violence and then  
7 because of that, the case is either -- they intervene in some  
8 ways. Sometimes it's taking a case down. Other times it's  
9 pulling a car over that you know may contain the folks. Is  
10 there anything like that that occurred here?

11 MR. RODRIGUEZ: So, certainly at the time, your Honor,  
12 there were investigative steps taken in response to this, but  
13 there's nothing concrete of the type that the Court is talking  
14 about, which is to say I can't say that law enforcement took an  
15 action that disrupted what would have, you know, imminently  
16 been harm to this person.

17 THE COURT: OK. And I had mentioned earlier that  
18 there's a difference between the criminal history calculation  
19 in the plea agreement and the criminal history calculation by  
20 the probation department.

21 Now, I've seen this before and it often is, I think,  
22 in part, attributable to, as I understand it, the rap sheets  
23 that are available to the United States Attorney's Office and  
24 then turned over to defense counsel and what they contain and  
25 what access probation has to more extensive records. But this

1 is the largest discrepancy I've seen, and I guess I would ask,  
2 in part -- yes, it relates to this case, but it relates to it  
3 more generally, the concern being, and obviously the government  
4 standing by the guidelines that are contained in the plea  
5 agreement as per the agreement, but I'm wondering, do you know  
6 if there's a specific reason that it happened in this case?

7 Was it because they were misdemeanors and local to  
8 Tennessee, some of them, or South Dakota? Do you have an  
9 understanding of why this happened?

10 MR. RODRIGUEZ: I have two responses to that, your  
11 Honor.

12 One is, yes, I do think part of the problem is the  
13 jurisdictions involved here. We are sort of at our most  
14 comfortable and safest and I think we get it right most often  
15 when we're talking about New York convictions.

16 Here, many of these convictions are from Tennessee and  
17 South Dakota. I will say that the criminal history records  
18 that the government obtained included some, but not all, of  
19 these Tennessee cases. What was not clear from those records  
20 always was how they were disposed of, which is to say, did they  
21 result in a conviction; did they result in a dismissal or  
22 something in between? And so that was part of the problem, No.  
23 1.

24 No. 2, my memory is -- Mr. Haber can correct me if I'm  
25 wrong, is that none of the South Dakota convictions, for



1 whatever reason, appeared on any of our criminal history  
2 records that we pulled and turned over in discovery. So I  
3 don't know if there is something particular about South Dakota  
4 criminal convictions and their ability to be reflected on our  
5 criminal history records, but those are really the two things.

6 THE COURT: I think there may be an issue with South  
7 Dakota.

8 MR. HABER: Your Honor, I'm sorry to interrupt, but my  
9 client has informed me that he's never even been to South  
10 Carolina or South Dakota, so I don't even get it, where it's  
11 coming from. Maybe that's why it's showing up with nothing in  
12 terms of dispositions on there.

13 THE COURT: Yes. That I don't know.

14 Let me just take a quick look, because I actually was  
15 going to have some questions about it. It's Sioux Falls Sioux  
16 Falls on January 23 of 2005 and October 3 of 2008, September 14  
17 of 2008. I don't know, Mr. Haber, how the probation  
18 department -- well, let me just confirm one thing. I don't  
19 believe, first of all, that any of the -- it doesn't appear  
20 that any of the South Dakota convictions resulted in any  
21 criminal history points.

22 MR. RODRIGUEZ: Your Honor, I think on paragraphs 116,  
23 117 appears to result in three.

24 THE COURT: Three points, yes.

25 Well, let me ask, Mr. Haber, if you want, I'll give

1 you time to look into that. Obviously that would change the  
2 guideline calculation if there's some mistake that's been made.  
3 I, again, don't know how they were matched up by the probation  
4 department. It's something I was curious about, the South  
5 Dakota things, because everything else was in Tennessee. Do  
6 you want some time?

7 MR. HABER: Let me have a moment to speak to my  
8 client.

9 THE COURT: Yes, absolutely.

10 MR. RODRIGUEZ: Your Honor, if it's helpful for  
11 Mr. Haber to consider, the government would have no objection,  
12 if this is something that the Court was inclined to do, for the  
13 Court to recalculate the guidelines disregarding the South  
14 Dakota criminal history points.

15 THE COURT: I can do that.

16 Why don't you go ahead, Mr. Haber, and speak to your  
17 client and then we can discuss how to proceed.

18 MR. RODRIGUEZ: Your Honor, I believe the parties have  
19 a proposal for the Court's consideration, which is if the Court  
20 were to disregard the three criminal history points reflected  
21 in paragraphs 116 and 117 of the PSR, I believe that would  
22 result in Mr. Santana having seven criminal history points  
23 rather than ten, which would put him in category IV rather than  
24 category V and result in a guidelines range of 188 to 235  
25 months.

1 THE COURT: Yes, I think that's right. That's what I  
2 saw.

3 A couple of things. No. 1, I'd like to confirm that  
4 Mr. Santana wants to go forward.

5 No. 2, I think the problem needs to be resolved in  
6 some way. The presentence report is going to follow  
7 Mr. Santana when he goes to prison, and I don't know if it  
8 impacts his designation. There are certain things that I would  
9 want to know, because I would literally strike those  
10 paragraphs; as things stand right now, I would. I don't have a  
11 problem not considering those in light of the fact that it's  
12 disputed, and I have no basis -- again, because I have not  
13 spoken to the probation officer, I have no basis to make a  
14 ruling three points should be counted in light of the dispute.

15 Having said that, there still are these other issues  
16 that would need to be addressed.

17 Mr. Haber, do you want a moment to speak to  
18 Mr. Santana?

19 MR. HABER: Yes, your Honor. Why don't we do that.  
20 Yes.

21 THE COURT: And then we can proceed.

22 MR. HABER: Your Honor, I've spoken to my client, and  
23 I think he wants to proceed and go forward. Ultimately, it may  
24 change the guideline, but it doesn't change the recommendation,  
25 which is lower. He just said that he's never been there, in

1 South Dakota. I don't know if it's a mistake on the record, or  
2 what. But in any event, it doesn't change, I think, the  
3 ultimate sentence that he would get if it's not counted. It  
4 shouldn't be counted, and the government is willing not to  
5 count it.

6 THE COURT: Sure. Let me just ask, though.

7 Mr. Santana, I'm prepared to allow some time to get to  
8 the bottom of the three criminal history points, the South  
9 Dakota issue, for lack of a better term; you understand that  
10 I'm willing to do that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understanding that, though, do you wish to  
13 go forward today if I basically, in essence, recalculate the  
14 guidelines, take away those criminal history points -- and  
15 there are three of them. When you take away those criminal  
16 history points, when you look at the guideline book, in the  
17 back, there's a chart, and that chart indicates that the  
18 guideline that would be applicable here would be 188 to 235  
19 months.

20 Now, as I mentioned, the guidelines, although I need  
21 to consider them as a factor, one factor, in what an  
22 appropriate sentence is for you, they're no longer binding, but  
23 I still have to consider them. In light of that, what would  
24 you like to do? Would you like to proceed today?

25 THE DEFENDANT: Yes, sir. I would leave it up to God.

1 THE COURT: Well, I understand that. I understand  
2 that, but it's ultimately your decision.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So you'd like to proceed.

5 THE DEFENDANT: Yes, I'm ready to proceed --

6 THE COURT: OK.

7 THE DEFENDANT: -- and get this over with.

8 THE COURT: OK.

9 THE DEFENDANT: Thank you, your Honor.

10 THE COURT: All right.

11 The only thing I would ask is that in the interim,  
12 once sentencing is completed, I would ask that the parties  
13 inquire of the probation department and figure out, not for the  
14 purpose of propounding another sentencing, but for the purposes  
15 of making sure that the presentence report is accurate. If it  
16 turns out that there's a mistake and those issues should come  
17 out, I can, on the judgment, indicate that those items should  
18 be stricken or request the probation department actually amend  
19 the report to take them out. And in that way, I think it would  
20 cover any issues, because the presentence report will be used  
21 for purposes, I think, of designation and also is something  
22 that -- well, I actually don't know whether it goes to the  
23 facility. It may go to the facility but only -- in other  
24 words, I don't even think Mr. Santana would have access to it.  
25 That may be a recent Bureau of Prisons issue, but I'd like to

1 make sure that it's accurate. So I would just ask the parties  
2 to endeavor to do that once we complete the sentencing.

3 THE DEFENDANT: Thank you.

4 MR. RODRIGUEZ: Yes, your Honor.

5 THE COURT: All right. Thank you.

6 In the presentence report, Mr. Rodriguez, it also  
7 indicates -- and I apologize; I think it's paragraph 12 -- that  
8 Mr. Santana had had some disciplinary infractions while he was  
9 in prison. But the presentence report obviously is somewhat  
10 dated.

11 Do you know if there were any other infractions after  
12 November of 2020.

13 MR. RODRIGUEZ: Unfortunately I do not, your Honor.

14 THE COURT: OK. All right. Thank you.

15 Mr. Haber, do you wish to be heard?

16 MR. HABER: I do, your Honor, briefly.

17 THE COURT: Yes.

18 MR. HABER: There are a couple of issues. The one  
19 issue that's been the most troubling to me, and I certainly  
20 made that known, I think, in my letter and in my conversations  
21 with the government, is that a man doesn't reach 40 years of  
22 age and become a major player in a gang and not have a criminal  
23 record for gang activity. He has a criminal record, but none  
24 of it is related to MS-13. Not a single arrest or conviction  
25 of his misdemeanors is related to MS-13 activity.

1           Now, I believe that the government believes that he's  
2     some kind of mover and shaker, but reality doesn't support  
3     that. It doesn't. The phone calls, which I've listened to,  
4     and I've also discussed that with the government, all of the  
5     orders are being given by somebody else. He's trying to carry  
6     them out. Is he an organizer as a consequence of that?  
7     Absolutely.

8           There's no evidence that he threatened anyone even  
9     though I realize that there was coercion, and I understand, I  
10    heard the statement by the lead defendant, you know, Catch the  
11    guy; he's got to pay back the money or we're going to put a hit  
12    out on him, or some comparable thing. His response was he just  
13    went along with what everybody else went along with. I just  
14    don't think he's this big bad guy. He doesn't have the  
15    intellect to do it. He doesn't read or write Spanish fluently  
16    or English. He's just not that guy.

17          The fact is that he's been a member of MS-13 since  
18    he's 13 years old and he has done some recruiting. There's no  
19    doubt about that. But I believe this is the first time in his  
20    activity with MS-13 that he got involved with this rather  
21    larger conspiracy. But none of this was in his mind. He  
22    didn't hatch this conspiracy. He went along with the program  
23    as a gang member, and he made a big mistake.

24          My problem with all of this is to look at a 168-month  
25    recommendation for someone with a mental health history

1 comparable to what Mr. Santana has, he's like an adolescent,  
2 He's been hospitalized for paranoid schizophrenia. He's  
3 bipolar. He's been in and out of hospitals his whole life.  
4 His problem is not taking his medication. When he takes his  
5 medication, he's very functional, and you can see by the  
6 letters of his family he's very loving and he's always there  
7 when he takes his medication. His problem is not taking his  
8 medication and he goes back out there and he does stupid  
9 things.

10 Violence only on his family, unfortunately, because  
11 most of these charges are domestic violence. Most of these  
12 charges, not all of them. There's a driving while intoxicated  
13 and reckless driving or driving without a license or driving  
14 with a suspended license and a couple of petty thefts. For a  
15 big guy of MS-13, it's incomprehensible that he could be that  
16 big.

17 THE COURT: I think there is one, I think, still  
18 related family member, which is the open matter which appears  
19 to be open, which is down in Tennessee, but there was also, I  
20 think, an incident involving, there was a dispute related to  
21 money, and Mr. Santana -- and an individual was yelling at or  
22 cursing at his aunt or something like that.

23 MR. HABER: You're talking about the open case that he  
24 has currently?

25 THE COURT: No. I think the open case may be slightly



1 different. I think the open case is the father of --

2 MR. HABER: It's a relative. It's family.

3 THE COURT: Correct. It involves an aunt. I don't  
4 know the individual -- they get into a fight basically, and I  
5 don't know -- I mean it's possible that that individual was a  
6 family member, but I don't think, it didn't indicate that.

7 MR. HABER: I think it was the boyfriend of one of  
8 the --

9 THE DEFENDANT: My aunt.

10 THE COURT: And so they got into a fight. I don't  
11 know if it resulted in any criminal history, but there was at  
12 least that one, I guess you could say related in a sense that  
13 he was, as your client indicated, the boyfriend of his aunt.  
14 I'm sorry. I interrupted, but if you could, as you're speaking  
15 about the criminal history, I was going to ask about the open  
16 case. There was a court appearance that was supposed to happen  
17 in January 2021.

18 MR. HABER: I spoke to his sister Flora, who lives in  
19 Tennessee and unfortunately couldn't get up here, but she told  
20 me that whoever -- it was family-related stuff in that the  
21 guy's not showing up for court. The case is probably more  
22 likely than not going to be thrown out over time especially  
23 depending on the amount of time he gets. But he's not  
24 cooperating, he's not looking to prosecute. That's my  
25 understanding.

1 THE COURT: OK.

2 MR. HABER: Obviously I haven't spoken to him. He's  
3 in Tennessee.

4 THE COURT: Yes.

5 MR. HABER: But all of these assaults, there were ten  
6 of them, they were all family members.

7 THE COURT: I get it. It means that he's not  
8 necessarily --

9 MR. HABER: He's bad. What he did is not good. I'm  
10 just saying a lot of it was out of his control because he  
11 wasn't taking his medication, for a number of reasons. One is  
12 he couldn't afford the shot. They can give you a shot now that  
13 lasts for a substantial amount of time. And he had to take his  
14 meds so he had to take his meds every day. I don't know what  
15 happened.

16 Look, I know people that are bipolar and they have  
17 issues sometimes. Sometimes you've got to deal with it.  
18 Sometimes they're rational if you talk to them and they go  
19 along with the problems, sometimes not. He definitely has  
20 mental health illness, and he needs help. There's no doubt  
21 about that. The real question is can the Bureau of Prisons  
22 provide that help? Giving him that amount of time, he's not  
23 going to get that help by the Bureau of Prisons. It's laid  
24 out, I think, well by Kathy O'Boyle in the mitigation letter  
25 that they just don't have the ability to care for these people.

1           So we're talking about, maybe, teaching people a  
2   lesson that you shouldn't do this by giving him that kind of  
3   time? It just doesn't make sense for someone that doesn't have  
4   a felony. There's all this talk about the LA table. I don't  
5   even know what it means, your Honor. I've represented gangs in  
6   this courthouse for 35 years or longer. Gangs usually have a  
7   hierarchy that can tell you who they are. You're a king or  
8   you're a warlord, or something. You're a 30 charge.

9           We don't have that here. We have a lot of conclusions  
10   that are being reached without any explanation as to how that's  
11   true and what he did to further that -- from a violence  
12   perspective, from any perspective. You know, they're painting  
13   him like he's a violent guy. He's not a violent guy.

14           THE COURT: No, no.

15           MR. HABER: He's a sick guy.

16           THE COURT: Just to be clear, there's no violence.  
17   Right?

18           MR. HABER: No. I think the government made that  
19   clear when you questioned them. I'm not suggesting not. But  
20   the suggestion in saying that he's a part of the hierarchy, you  
21   get the smell of MS-13 all over you. We know that that's a  
22   despicable gang, that they've done some horrible things and  
23   that they kill people, but that's not a reason to give him 14  
24   years in jail. That's a ton of time that they're asking for,  
25   and it just doesn't make sense and it doesn't seem fair.

1           Now, I've been doing this a long time and I know when  
2 I've got bad guys and I've got bad guys. He may be a bad guy,  
3 but he's not anywhere near leadership, where he makes decisions  
4 and orders people shot or killed or hurt. We never heard  
5 anything like that on these tapes. I'm just suggesting, look,  
6 it's a conspiracy, I look at it as a gang conspiracy. He  
7 should certainly do time. He needs to learn a lesson from  
8 this, and I think he will.

9           If it's any consolation to you, his mother told me  
10 she's moving to Tennessee when he gets out and she will keep an  
11 eye on him and make sure he takes his medication, which has  
12 always been an issue in his life. I think there should be some  
13 equity in this, some fairness in this in terms of looking at  
14 the whole picture without drawing conclusions, because we talk  
15 about gangs in a way where we always draw conclusions. We  
16 always assume. But his history doesn't show that. The man's  
17 40 years old. The history doesn't show him to be dangerous  
18 like that. Selling guns in Tennessee isn't like selling guns  
19 in New York. It's a lot different, as the Court, I'm sure, is  
20 aware. It's easier to get them and it's easier to move them.

21           THE COURT: Yes.

22           MR. HABER: I'm not suggesting that anything he did  
23 was right, and he certainly needs to pay for it, but let's come  
24 up with a fair number, a number that's reasonable, a number  
25 that doesn't take away years of his life without treatment.

1 That's all we're asking for.

2 THE COURT: OK.

3 MR. HABER: That's all, your Honor.

4 THE COURT: All right.

5 Mr. Santana, would you like to say anything on your  
6 own behalf?

7 You can remain seated. I just ask that you speak into  
8 the microphone.

9 THE DEFENDANT: Yes, sir. I'm just being pointed as a  
10 leader, which, you know, I was, you know. I'm not going to  
11 come into court and lie to you, but part of these arguments, I  
12 didn't even know about it. Like the drugs that were coming,  
13 the package that they say that they seized over here in New  
14 York, it wasn't part of me.

15 And then the other, with the bad connection and  
16 everything, it wasn't part of me either. It was not in my  
17 hands. Like he said, it was not in my hands. So, is -- OK, I  
18 am MS-13. I recognize that and I've been in it since I was 13  
19 years old. I'm not going to lie to you. I am, but I'm not --  
20 I'm being charged with cases that's not even in my hands, not  
21 even involved my decisions that I complete the, the, the  
22 crimes, you know. Like, they were masterminds, that it was my  
23 part, that I was receiving money.

24 No, it was not a part of me, and that's, that's -- the  
25 whole time that they point to me is like, I'm, like, all right,

1 I'm willing to take this time, but what about my treatment?  
2 You know, I have mental illness. All right. If you send me to  
3 a federal medical center, I could get help, that's fine with  
4 me. You know what I'm saying? I'm not asking -- you know, I  
5 don't want a lot of time, but just, you know, just, you know,  
6 do the reviews of my, my history, crime history, where there's  
7 been mental illness problems that when I don't take my medicine  
8 I get agitated, I don't sleep for two weeks. If I don't get  
9 the Abilify shot, I can't function like I should.

10 Right now I'm functioning good because I get my  
11 medicine over there in MDC. Every night I take it, I sleep  
12 well. You know, I'm not aggressive, so, you know, and it's  
13 healthy, you know. And I learned my lesson. It's almost two  
14 years that I've been incarcerated and I learned my lesson, you  
15 know. And I'm just -- you know, asking you to, you know, see  
16 all that. And when I get out, my mom is going to go take care  
17 of me and I just want to spend time with my grandsons and my  
18 family.

19 THE COURT: OK.

20 THE DEFENDANT: That's it.

21 THE COURT: Thank you, Mr. Santana.

22 Mr. Rodriguez, I forgot to ask a question related to  
23 the relative culpability of the defendants that are contained  
24 on the chart on page 4 of the sentencing submission of the  
25 government. You indicated that it goes from most culpable to

1 least culpable, from the government's perspective, but why is  
2 Mr. Santana considered more culpable than José Garcia or  
3 Christian Guerrero-Melgares.

4 MR. RODRIGUEZ: So --

5 THE COURT: And I guess the question has a sort of  
6 finer point on it. Is it just because of where the government  
7 had placed each of them within the program?

8 MR. RODRIGUEZ: There's two components to this.

9 THE COURT: Yes.

10 MR. RODRIGUEZ: But I think once you get to  
11 Mr. Santana, Mr. Garcia and Mr. Guerrero-Melgares, I would  
12 point to two things that distinguish those three people.

13 One is the extent of their involvement in facilitating  
14 the nationwide methamphetamine trafficking, No. 1 -- maybe  
15 three things.

16 No. 2 is Mr. Santana's involvement in being a higher  
17 ranking member of the table than Mr. Garcia and  
18 Mr. Guerrero-Melgares, and I think that's reflected, for  
19 example, in the extortion phone call. This is the government's  
20 view of their relative culpability, but perhaps there's not as  
21 massive of a leap between the three as there would be, for  
22 example, closer to the bottom of that chart.

23 THE COURT: OK. All right. I think I understand.  
24 All right. Thank you.

25 Let me ask, is there any reason why sentence should

1 not be imposed at this time?

2 MR. RODRIGUEZ: No, your Honor.

3 MR. HABER: No, your Honor.

4 THE COURT: As I stated and the parties agreed,  
5 Mr. Santana's guideline range is 188 to 235 months. As I  
6 mentioned, that reduces the guideline calculation in the  
7 presentence report by taking out those three criminal history  
8 points.

9 Do the parties agree that once those are taken out the  
10 guidelines range is 188 to 235?

11 MR. RODRIGUEZ: Yes, your Honor.

12 MR. HABER: Yes, your Honor.

13 THE COURT: Under the Supreme Court's decision under  
14 *Booker* and its progeny, the guideline range, as I mentioned, is  
15 one factor that I must consider in deciding an appropriate  
16 sentence. I'm also required to consider the other factors set  
17 forth in 18 U.S.C. Section 3553(a), and I have done so.

18 Now, those factors include, but are not limited to,  
19 the nature and circumstances of the offense and the personal  
20 history and characteristics of a defendant, since each  
21 defendant must be considered as an individual.

22 Now, I'm also required to consider the need for the  
23 sentence imposed to reflect the seriousness of the offense,  
24 promote respect for the law, provide just punishment for the  
25 offense, afford adequate deterrence to criminal conduct and to



1 avoid unwarranted sentencing disparities, among other things.

2 First, I'm going to address the circumstances of the  
3 offense. There's no question, Mr. Santana, that you've been  
4 convicted of a serious offense. First, being a member and a  
5 leader, as you mentioned, of MS-13 is itself a serious offense  
6 because it's a criminal organization whose purpose is to commit  
7 crimes so that it can benefit its members.

8 Now, here, as a general matter, the group has been  
9 involved -- leaders and members and associates -- in committing  
10 acts of murder, extortion, firearms trafficking and  
11 distribution of narcotics. You're not charged with and there's  
12 no evidence here -- again, putting aside the extortion that we  
13 mentioned -- that you were involved in any violence. But  
14 there's no question that MS-13 is. Having said that, that's  
15 not what you're charged with here.

16 However, you did admit, as part of the plea agreement,  
17 that you participated in the enterprise, MS-13, with the  
18 knowledge that members of that organization conspired and  
19 committed and attempted to commit acts of violence against  
20 rival members and others in furtherance of the enterprise.  
21 Again, none of that's charged. You're not charged with that.

22 Second, as you've conceded, you are a leader. What  
23 I'll say is a leader for purposes of the guidelines. In terms  
24 of where you fell in the hierarchy of MS-13, for my purposes,  
25 I'm treating you as a leader as it stands for purposes of the

1 guidelines, as I mentioned, and there were four points that  
2 were added to your guidelines calculation. But again, there's  
3 no question that you were a member of this criminal enterprise.

4 Now, third, you participated within that enterprise in  
5 a conspiracy to distribute methamphetamine and cocaine. I  
6 recognize methamphetamine and making it a distribution network  
7 from Mexico into the United States, to Tennessee, New York,  
8 California, may not have been your brainchild; in other words,  
9 it wasn't something that you came up with. Maybe Mr. Romero  
10 may have decided that that was the way that the organization  
11 should go. But it is clear that you were going of part of that  
12 in assisting to accomplish that, and that as part of that you  
13 agreed with these other folks, including your codefendants, to  
14 try and make that happen, and as part of that there were  
15 certain seizures that were made. You made a sale of cocaine,  
16 there were three firearms which you sold, so there's no  
17 question that you were involved, and those are all serious  
18 offenses.

19 Now, to Mr. Haber's point about gun trafficking in  
20 Tennessee, yeah, it might be easier because the gun laws are  
21 what they are in Tennessee, but that doesn't make it -- that  
22 still makes it a crime, and the simple fact is the CI/UC who  
23 purchased the guns went down to Tennessee. In part, that was  
24 probably -- well, in part because for you guys to travel up  
25 here, you would have been as you traveled with the guns

1 committing crimes in each state as you would come up. So there  
2 may have been a reason why they decided to do that.

3 But putting that aside, you're putting guns out there  
4 and on the street in the hands of people who you don't know one  
5 way or the other what they're going to do with it. But in all  
6 likelihood, it's going to be criminal activity; otherwise, they  
7 would go buy the guns themselves.

8 Fourth, and again, I recognize that you may not have  
9 been the one who said that the member of the organization was  
10 going to be green lit if you didn't get the money back. But as  
11 you said, you were part of it and you went along with that.  
12 And that's part of being part of a conspiracy and part of a  
13 group, and here, the gang is MS-13. So you may not have been  
14 the person who was going to, when it ultimately came to it,  
15 beat up the MS-13 member or kill the person, but you would be  
16 part of it.

17 And so although I recognize that there are others that  
18 are certainly more culpable than you are, some who are charged  
19 here and others who have yet to be charged, and I recognize  
20 that. So that's Mr. Haber's point, that, look, you're not --  
21 there are others that are certainly more culpable and the  
22 criminal activity that you're charged with is in a very, in a  
23 short period of time.

24 But now I'll address your history and characteristics.

25 It's clear from the presentence report and the

1 submission that I got from Mr. Haber that your childhood was  
2 somewhat turbulent due to your father's temper and the abuse he  
3 inflicted was verbal and emotional on you and your siblings;  
4 physical, according to the PSR and the submissions, against  
5 your mom when he was drunk because, as mentioned, he was an  
6 alcoholic. I mean it was so severe that you committed to  
7 yourself that, when you got older that you would try and  
8 intervene. In fact, when you were 16 or so, you did intervene  
9 to prevent, you know, when your father was abusing your mother,  
10 you intervened in such a way that he stopped --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- at least that particular time.

13 THE DEFENDANT: Yes.

14 THE COURT: So I recognize that. I also recognize  
15 that your family did struggle financially when you were growing  
16 up. Your dad initially worked in a clothing factory and your  
17 mom cleaned houses and residential properties, and that your  
18 dad had to stop working because of a back injury but then began  
19 selling pickup trucks in El Salvador, and things improved but  
20 your family continued to struggle financially.

21 THE DEFENDANT: Yeah.

22 THE COURT: But you said your parents did their best  
23 to provide for you, and your mom is here in court. And I've  
24 read all the letters submitted by your siblings and your  
25 ex-wife, and it's clear to me that those folks support you.

1 They're going to support you once you're out of prison, and I  
2 take it that, from what Mr. Haber said here today but also in  
3 the submissions, that your mom intends to move back to  
4 Tennessee when you're released to the home that she owns there,  
5 which I believe is currently being rented.

6 So I will take their view of your character into  
7 consideration in determining what an appropriate sentence is  
8 for you. But I will say that their love, their support, you've  
9 had that your entire life. But for whatever reason, that  
10 didn't dissuade you from being in the life and certainly didn't  
11 dissuade you from the specific crimes that are charged here.  
12 And I would add to that, even the birth of your grandson didn't  
13 dissuade you. In other words, as you understand, that this  
14 could lead to where you are right now.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So I have to balance those things out, and  
17 I recognize that your family has indicated that they consider  
18 you a loving father and son, grandfather and otherwise. I  
19 recognize that.

20 Now, I also recognize that you have a history of  
21 mental health issues; that over the years you have at times  
22 taken medication and sometimes you haven't. Even when you were  
23 16 or 17, you were diagnosed as being paranoid, having paranoid  
24 schizophrenia, and you spent approximately a year in a hospital  
25 facility. And unfortunately, while you were there, your dad

1 passed away during that time.

2 So, look, I will consider the circumstances of your  
3 childhood, your mental illness as part of determining what an  
4 appropriate sentence is for you.

5 THE DEFENDANT: Thank you.

6 THE COURT: Now, I can't gauge when you were on or  
7 when you were off medications. I take it that sometimes you  
8 were off your medication when you committed certain of the  
9 crimes that are part of your criminal history.

10 Now, putting aside the South Dakota things, there's no  
11 question that at times, and whether you were on your medication  
12 or not, there were times that you were agitated and even  
13 violent.

14 A couple of things.

15 The fact that, perhaps, domestic violence isn't  
16 treated as a serious enough crime in society or in Tennessee,  
17 where at least some of the incidents you put your hands on  
18 folks and the fact that they were misdemeanors, they're  
19 misdemeanors, but I think the severity of them, especially when  
20 you're actually assaulting somebody, can't be understated. And  
21 I also understand that the reality of the situation is your  
22 family loves you, and I think in the end, they didn't want you  
23 to get in trouble. You probably didn't want to put them  
24 through it and it resulted in those pleas, but there is no  
25 question that there had been a lot, 16 or 17, taking away the

1 South Dakota convictions for misdemeanors.

2 Having said that, you have no felony convictions, so I  
3 recognize that. And the open case, it remains to be seen  
4 what's going to happen with that, but here again, not unlike  
5 this crime, you weren't dissuaded from committing those crimes  
6 by any of the, even though short, periods of incarceration that  
7 you spent.

8 Now, I'm also going to consider the fact that certain  
9 portions of the time you spent in prison was during the  
10 pandemic.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I recognize that the conditions in the  
13 prison, not only in the Southern District, not only in MCC and  
14 MDC, but throughout the country, were more harsh.

15 THE DEFENDANT: Yes.

16 THE COURT: And not unlike the whole society was put  
17 through a horrible time, I wreck nice and I'll consider the  
18 fact that it was certainly more harsh. There were no programs  
19 and you were locked down most of the time.

20 THE DEFENDANT: Yeah.

21 THE COURT: Hot meals were few and far between.  
22 Having said that, the facility was trying to do what it could  
23 to prevent the spread of the virus in a congregate situation,  
24 and that's not an easy thing to accomplish. And I also  
25 recognize that during that time in prison you did contract

1 COVID-19.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Fortunately, you've recovered, but that  
4 didn't mean that while you were sick you weren't concerned, and  
5 my understanding is you reported to your mom that at some point  
6 you thought that you might pass from the virus. So I'll  
7 recognize that and I will consider it in determining what an  
8 appropriate sentence is for you.

9 THE DEFENDANT: Thank you.

10 All right. Mr. Santana, if I could please ask you to  
11 rise for the imposition of sentence.

12 It is the judgment of the Court that you be committed  
13 to the custody of the Bureau of Prisons for a period of 110  
14 months on each count to run concurrently.

15 You can be seated.

16 That period of incarceration will be followed by three  
17 years of supervised release on Count One and five years'  
18 supervised release on Count Two to run concurrently.

19 There will be no fine as the probation department has  
20 determined that you don't have the wherewithal to pay a fine.

21 You must pay a \$100 special assessment, which is due  
22 immediately.

23 Was there a forfeiture allegation? Is the government  
24 seeking forfeiture?

25 MR. RODRIGUEZ: The government's not seeking



1 forfeiture, your Honor.

2 THE COURT: OK. So there won't be any forfeiture  
3 here, and no victims have been specifically identified so  
4 there's no restitution that I'm going to order.

5 You must pay a \$200 special assessment, which is due  
6 immediately.

7 Now, I believe that this sentence is sufficient but  
8 not greater than necessary to comply with the purposes of  
9 sentencing set forth in Title 18, United States Code, Section  
10 3553(a).

11 With regard to supervised release, you'll be subject  
12 to the mandatory conditions on pages 47 and 48 of your  
13 presentence report as well as the standard conditions and  
14 special conditions on pages 48 to 50.

15 Have you read those conditions of your supervised  
16 release?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: OK. All right. So part of that will  
19 include, one of the things -- and I'm not mentioning all of  
20 them. One of the things will include mental health treatment  
21 when you're out. When you're in prison, I hope -- well, when  
22 you're in prison, you should at a minimum continue to get the  
23 medication that you've been on, and depending upon where you  
24 go, I would hope that there would be some mental health  
25 treatment that you could get while you're in prison.

1           Now, let me ask, Mr. Haber, because I'm more than  
2 willing to recommend a facility close to Tennessee to  
3 facilitate family visits, and I'll also recommend that  
4 Mr. Santana be considered for a facility that provides mental  
5 health maintenance. As between the two, do you have a sense,  
6 because I can either just put it in the judgment just as that,  
7 both recommendations.

8           Now, Mr. Santana, these are recommendations. I don't  
9 have the authority --

10          THE DEFENDANT: Yes, sir.

11          THE COURT: -- to direct the Bureau of Prisons to  
12 either house you in a certain facility or to provide you with  
13 certain services. Having said that, I can and will recommend  
14 both of those things. So, Mr. Haber, do you have a sense of  
15 which -- I don't know enough about the facilities in that area  
16 of the country to know.

17          MR. HABER: I think there's a facility in Lexington,  
18 Kentucky, that's probably a medical facility. So I think both  
19 of those recommendations we would appreciate.

20          THE COURT: OK.

21          MR. HABER: And hopefully they'll get him into an  
22 institution where he'll get some help.

23          THE COURT: All right. I'll make those  
24 recommendations. I'll just put it in there --

25          MR. HABER: Thank you.

1 THE COURT: -- and leave it to the Bureau of Prisons  
2 to figure out what the best situation will be.

3 MR. HABER: Thank you.

4 THE COURT: Let me ask, does either counsel know of  
5 any legal reason why the sentence should not be imposed as  
6 stated?

7 MR. RODRIGUEZ: No, your Honor.

8 THE COURT: Mr. Haber.

9 MR. HABER: No, your Honor.

10 THE COURT: That's the sentence that I'm imposing.

11 Now, you have the right to appeal your conviction and  
12 sentence now to the extent it's inconsistent with your plea  
13 agreement. The notice of appeal would have to be filed within  
14 14 days of the judgment of conviction. If you're not able to  
15 pay the cost of an appeal, you may apply for leave to file an  
16 appeal *in forma pauperis*; in other words, as someone who is  
17 indigent. If you request, the clerk of the court will prepare  
18 and file a notice of appeal on your behalf.

19 Now, Mr. Santana, it's not the sentence Mr. Haber  
20 asked for, but we talked about the sentence recommended by  
21 probation or by the government, and the only thing I can say is  
22 I hope that when you do get out, you're true to your word, that  
23 you honor your family and don't commit any additional crimes.

24 Look, I don't want to see you again. And God willing  
25 I'll be here when you get out.

1 THE DEFENDANT: Yeah.

2 THE COURT: And if I'm not, whoever the judge is that  
3 gets this is going to get this transcript. So I'm just saying  
4 you've got to keep your nose clean. The next time is going to  
5 be much worse, I'll put it that way.

6 THE DEFENDANT: I understand, and I learned my lesson.

7 THE COURT: All right. Well, I hope so. I hope so.

8 THE DEFENDANT: Thank you.

9 THE COURT: To the extent there are any outstanding  
10 indictments or counts, they're going to be dismissed.

11 Let me ask whether there are any other applications.

12 Mr. Rodriguez.

13 MR. RODRIGUEZ: Not from the government, your Honor.

14 THE COURT: Mr. Haber.

15 MR. HABER: Not from the defendant.

16 THE COURT: OK. Thank you, everyone. Sorry it took  
17 as long as it did.

18 Mr. Santana, as I said, good luck.

19 We'll stand adjourned. Thank you.

20 (Adjourned)  
21  
22  
23  
24  
25